

March 2, 2011

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554
Via Electronic Filing

Re: *Ex Parte Communication*, WC Docket No. 07-245, GN Docket No. 09-51

Dear Ms. Dortch,

The DAS Forum, a membership section of PCIA—The Wireless Infrastructure Association,¹ respectfully submits the following *ex parte* communication in the above-captioned docket regarding the attachment of wireless antennas and associated equipment to utility poles.² We urge the Commission to recognize the important role of wireless pole attachments—particularly distributed antenna systems (“DAS”)—in achieving the Commission’s broadband and wireless goals, and to take action through this proceeding to reduce the barriers to wireless pole attachments. The docket in this proceeding contains numerous examples of the serious barriers to deployment facing wireless attachers. This *ex parte* catalogues those already in the record, and highlights additional examples provided by DAS Forum members.

Additionally, we take this opportunity to clarify the process by which wireless attachers and utility pole owners negotiate master agreements and technical standards for wireless attachments, and the subsequent make ready process. Finally, we take this opportunity to again demonstrate that wireless attachments to utility poles and pole tops do not pose any safety or reliability problems, and that the docket does not contain any specific legitimate claims of safety and reliability problems posed by wireless attachments.

I. THE IMPORTANCE OF DAS AND WIRELESS ATTACHMENTS

DAS is a crucial part of the wireless network ecosystem. DAS is highly effective at providing increased coverage and/or capacity in areas where traditional macro sites are infeasible. DAS enables the efficient use of existing spectrum, is scalable to accommodate multiple carriers on the same system, and is generally easily upgraded to newer technologies. It is relied upon by

¹ PCIA is a non-profit national trade association representing the wireless infrastructure industry. PCIA’s members develop, own, manage, and operate over 150,000 towers, rooftop wireless sites, and other facilities for the provision of all types of wireless and broadcast services. The DAS Forum’s membership includes virtually every major neutral host outdoor and indoor DAS provider, as well as manufacturers of equipment used in the wireless service sectors, and several commercial mobile radio service carriers currently deploying DAS as part of their networks.

² *In re Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, WC Docket No. 07-245, GN Docket No. 09-51, *Order and Further Notice of Proposed Rulemaking*, FCC-10-84 (May 20, 2010) (“*Order and FNPRM*”).

large national wireless providers and competitive regional providers. DAS exists today as a tool to improve coverage and capacity with existing spectrum and to facilitate competition.³

President Obama and Chairman Genachowski recently established impressive goals and initiatives for wireless and broadband deployment. The President set the goal of covering 98% of the country with next generation wireless services within the next five years.⁴ The Chairman launched a Broadband Acceleration Initiative focused on spurring infrastructure deployment by reducing the barriers facing infrastructure providers.⁵ Through its NATIONAL BROADBAND PLAN, the Commission also established the goal of the United States having the most advanced wireless networks of any nation.⁶ DAS plays a crucial role in these important goals and initiatives.

The Commission has an opportunity through this proceeding to take action now to begin to reduce barriers to wireless deployment. The Commission and Supreme Court have both found wireless attachers have the same rights as other attachers under section 224 of the Telecommunications Act of 1996.⁷ Yet, wireless attachers' rights have consistently been denied

³ The benefits of DAS have been explained extensively on the record. See Comments of the DAS Forum, A Membership Section of PCIA—The Wireless Infrastructure Association, WC Docket No. 07-245, RM-11293, RM-11303, at 3-6 (Mar. 7, 2008) (speed to market, coverage and capacity in dense areas, protects sensitive environments, efficient use of infrastructure); Ex Parte of the DAS Forum, A Membership Section of PCIA—The Wireless Infrastructure Association, WC Docket No. 07-245, at 2-5 (Apr. 19, 2010) (coverage and capacity in sensitive areas, public safety, spectral efficiency, efficient use of infrastructure); Comments of the DAS Forum, A Membership Section of PCIA—The Wireless Infrastructure Association, WC Docket No. 07-245, GN Docket No. 09-51, at 4-8 (Aug. 16, 2010) (coverage and capacity, public safety, competition, efficient use of infrastructure); Ex Parte of the DAS Forum, A Membership Section of PCIA—The Wireless Infrastructure Association, WC Docket No. 07-245, at 5 (Feb. 11, 2011) (coverage, capacity, spectrum efficiency, interference mitigation, data throughput, scalability, adaptability); Comments of NextG Networks, WC Docket No. 07-245, RM-11293, RM-11303, at 2-5 (Mar. 7, 2008) (efficiency, coverage and capacity, spectral efficiency, data throughput); Comments of NextG Networks, WC Docket No. 07-245, GN Docket No. 09-51, at 3-6 (Aug. 16, 2010) (efficient use of infrastructure, coverage and capacity, spectral efficiency, data throughput); Comments of MetroPCS Communications, WC Docket No. 07-245, RM-11293, RM-11303, at 1-2 (Mar. 7, 2008) (competition, alternative deployment option); Comments of MetroPCS Communications, WC Docket No. 07-245, GN Docket No. 09-51, at 1-7 (Aug. 16, 2010) (competition, alternative deployment option, protect sensitive environments, efficient use of infrastructure); Comments of CTIA—The Wireless Association, WC Docket No. 07-245, RM-11293, RM-11303, at 3-6 (Mar. 7, 2008) (alternative deployment option, efficient use of infrastructure, public safety); Comments of CTIA—The Wireless Association, WC Docket No. 07-245, GN Docket No. 09-51, at 3-5 (Aug. 16, 2010) (efficient use of infrastructure, investment and innovation, public safety, coverage and capacity); Comments of T-Mobile USA, WC Docket No. 07-245, RM-11293, RM-11303, at 1-2 (Mar. 7, 2008) (alternative deployment option); Comments of T-Mobile USA, WC Docket No. 07-245, GN Docket No. 09-51, at 3-5 (Aug. 16, 2010) (efficient use of infrastructure, alternative deployment option, competition);

⁴ President Barack Obama, State of the Union Address (Jan. 25, 2011).

⁵ The FCC's Broadband Acceleration Initiative: Reducing Regulatory Barriers to Spur Broadband Buildout (rel. Feb. 2, 2011).

⁶ NATIONAL BROADBAND PLAN at 9 (2010)

⁷ *In re* Amendment of the Commission's Rules and Policies Governing Pole Attachments, *Report and Order*, 13 FCC Rcd 6777, ¶¶ 39–41 (Feb. 26, 1998); *aff'd* NCTA v. Gulf Power, 534 U.S. 327, 340–42 (2002); Wireless Telecommunications Bureau Reminds Utility Pole Owners Of Their Obligations To Provide Wireless Telecommunications Providers with Access To Utility Poles At Reasonable Rates, *Public Notice*, 19 FCC Rcd 24930 (Dec. 23, 2004).

by utility pole owners across the country. We ask that the Commission take action now to give meaning to those rights.

II. WIRELESS ATTACHERS FACE UNREASONABLE DENIALS OF ACCESS, MONOPOLY RATES, AND EXTREME DELAYS

DAS Forum members and other wireless attachers have put a substantial number of examples on the record of unreasonable denials, monopoly rates, and extreme delays.⁸ The nature of negotiations and agreements between wireless providers and utility pole owners limits the level of specificity that can be publicly disclosed. Nonetheless, numerous examples exist, and we provide new examples of unreasonable barriers to access and unreasonable delays below.⁹ Because rate negotiations are generally subject to non-disclosure agreements, we are unable to share specific examples of monopoly rates charged by pole owners for wireless attachments. However, there are many instances where wireless attachers are charged over \$1,000 annually for a wireless attachment.

Access

- **Southern Company.** A DAS Forum member reports that this electric utility will not consider pole top wireless installations on any infrastructure unless explicitly directed to do so by the FCC. Accordingly, they have declined requests to meet and discuss their concerns over safety and reliability regarding pole top wireless attachments.
- **First Energy.** A DAS Forum member has, for seven years, attempted to attach to First Energy's poles across several states. Each time the DAS provider was told that First Energy does not enter into agreements for attachment of antennas under the same terms and conditions as other telecommunications attachers. Instead, the DAS provider was referred to First Energy's subsidiary, First Telecom, as the only way to gain access to First Energy's

⁸ See 2008 Comments of The DAS Forum at 7-11 (detailing unreasonable denials attributed to safety, delays, and monopoly rates); 2008 Reply Comments of The DAS Forum at 8-10, 12, 14-15 (detailing blanket denials of wireless attachers, reasonable make-ready timelines currently in use, and monopoly rates); Ex Parte of the DAS Forum, A Membership Section of PCIA—The Wireless Infrastructure Association, WC Docket No. 07-245, at 2-5 (June 23, 2008); 2009 Ex Parte of The DAS Forum at 7-8 (denial of access, delays); 2010 Comments of The DAS Forum at 12-13, 16, 22 (denial of access, delays and unreasonable rates); 2008 Comments of NextG Networks at 5-8, 11-12, 15-20 (documenting NextG's experience with utilities and denial of access and unnecessary, excessive delays); 2010 Comments of NextG Networks at 6-7, 12; 2010 Reply Comments of NextG Networks at 6-7, 23-24 (providing examples of a reasonable, achievable make-ready timeline with a utility and unreasonable rates for wireless attachments); 2008 Comments of CTIA at 7-9 (delays, unreasonable rates, exorbitant fees); 2008 Reply Comments of CTIA at 6 (examples of utilities that allow pole top wireless attachments and the exemplary safety record of the attachments); 2008 Comments of T-Mobile at 3-6 (example of utilities that restrict wireless attachments to low-voltage utility poles or limit pole-top wireless attachments to "primary-voltage" poles and that regularly tie access to distribution poles to access to transmission towers); Comments of Extenet Systems, Inc., WC Docket No. 07-245, RM-11293, RM-11303, at 3-5, 7-8 (Mar. 7, 2008) (unreasonable rates as barrier to market entry and denial of access for wireless attachers); Reply Comments of Extenet Systems, Inc., WC Docket No. 07-245, RM-11293, RM-11303, at 11-14 (Apr. 22, 2008) (excessive rates as a windfall for utilities, denial of access for equipment association with wireless antenna).

⁹ Despite the existence of numerous examples of problems, the Commission has the authority and prerogative to grant wireless attachers the same rights as all other attachers regardless of the quantity and quality of barriers facing wireless attachers.

infrastructure. First Telecom offers wireless infrastructure siting services in competition with the neutral host wireless industry, advertising the availability of the assets of First Energy's principal electric operating subsidiaries, including distribution poles, transmission line towers, property, and buildings.

- **Hawaiian Electric**. The poles in Hawaiian Electric's service are jointly owned with Hawaiian Telecom; Hawaiian Electric owns the top of half of the pole. While Hawaiian Telecom allows wireless attachments in its half of the pole, Hawaiian Electric will not allow wireless attachments in its half of the pole, which includes the pole top.
- **Florida Power and Light**. While Florida Power and Light ("FPL") allows wireless antennas in the communication space, the sum total of their wireless attachment standards, including prohibition of pole top access, effectively denies access in many cases. Wireless attachers who have attempted to deploy on FPL's distribution infrastructure have been forced to install their own poles for antennas or utilize transmission infrastructure rather than being able to collocate on poles that would be useable in other service territories in Florida. For example, one DAS provider recently requested access to seven FPL poles for antenna installations. However, due to FPL's restrictions, access was not allowed and the DAS provider had to resort to asking the local municipality for permission to install seven new poles

Timing

- **Pepco**. After months of negotiating, a DAS Forum member was finally recently able to get an estimated make ready timeline from Pepco for two DAS installations totaling less than 20 nodes. The estimate was for over 260 working days, which amounts to over a year. This, despite the fact that Pepco has two other DAS installations on its poles in the area with identical types of attachments as the proposed attachments.
- **Windstream & Frontier Communications**. A DAS Forum member asked Windstream to agree to make-ready timelines in its pole attachment agreement for wired and wireless attachments. Windstream has refused to do so, but has indicated that it will follow the FCC's rules when adopted. The DAS Forum member reports a similar experience with Frontier Communications in Minnesota.

The Commission must take action in this proceeding to explicitly establish that any denial of pole top access must follow a survey and must include "a written explanation of evidence and information for denying the request for reasons of lack of capacity, safety, reliability or engineering standards."¹⁰ The Commission must also explicitly establish that wireless attachers are subject to the regulated rate for the type of service provided. Finally, as explained in greater detail below, the Commission must ensure that wireless attachers have timely access to utility poles through reasonable make ready timelines.

¹⁰ *Order and FNPRM* ¶ 35.

III. WIRELESS MAKE READY TIMELINES SHOULD BE AS CLOSE AS POSSIBLE TO WIRELINE TIMELINES

Commenters in this docket have explained in detail that make ready for wireless attachments can be done as quickly if not quicker for wireline attachments. The DAS Forum urges the Commission to adopt a make ready timeline for wireless attachments that is the same as the wireline timeline. We take the opportunity in this *ex parte* to clarify the process and timing for wireless attachment requests. We also point out that the make ready process does not differ significantly between wireless and wireline attachments. The fact that one attachment is an antenna and one is a wire is only a consideration with respect to the clearances necessary for that attachment.

Wireless and wireline attachers alike will generally obtain a master pole attachment agreement from the pole owner before submitting an application to attach to a specific pole.¹¹ The master agreement is generally very generic, and usually does not vary significantly between wireless and wireline attachers.

The application and make ready processes for which we seek equal timelines do not differ significantly between wireless and wireline attachments. An application identifies the type of equipment proposed for attachment and where the proposed attachment space is on the pole. The make ready survey assesses the attachment, the existing pole clearances, and pole loading. The make ready estimate consists of a list of poles and how the lines need to be rearranged to accommodate a new attachment. All of this applies whether the attachment is wireline or wireless.

What must be avoided is a decision mandating timelines for wireline attachments and not for wireless attachments. In that scenario, it is likely that a pole owner will ignore an application for wireless equipment attachment because there is no mandated timeline for it, whereas there would be for a wireline attachment. This would put wireless technology at a significant competitive disadvantage on speed to market for wireless broadband services. There is no justification for discriminatory treatment.

In the event a wireline or wireless attacher proposes a novel attachment technique or an arrangement on a pole that is unique to a utility, there is typically a process for establishing a technical standard for the new technique or attachment. New equipment, regardless of type, is evaluated to ensure it complies with the National Electrical Safety Code and any other utility engineering requirements. The Commission does not consider this in its proposed make ready timeline for wireline attachers, and in practice the process does not differ between different types of attachers.

Once an acceptable technical standard is established, the wireless attacher will formally submit an application, triggering the 45 day survey and response period and the Commission's proposed

¹¹ Note that under section 224 the right to attach is not predicated on the execution of an agreement. *See* 47 U.S.C. § 224 (f)(1). *In re* Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, *First Report and Order*, 11 FCC Rcd 15499 ¶ 1191 (1996).

wireline make ready timeline.¹² Again, this process does not differ depending on the type of attachment, and the Commission should not adopt different timelines for different types of attachments.

IV. THE RECORD CONTAINS NO SPECIFIC EXAMPLES OF INSTANCES OF SAFETY OR RELIABILITY ISSUES CAUSED BY ANTENNAS ON POLES OR POLE TOPS

A common theme among utility pole owners, and particularly electric utilities, is that wireless attachments cause a host of safety and reliability problems. Wireless attachers have submitted substantial evidence on the record by qualified professionals demonstrating that wireless attachments can be attached safely to utility poles and pole tops and do not cause any reliability issues. Wireless attachers have responded, point-by-point, to the litany of unsubstantiated claims made by some electric utilities.¹³

Wireless antennas have been attached to utility poles for years. The NESC has had rules governing wireless attachments since 2001. There are well over 5,000 wireless antennas attached to utility poles across the country. This docket has been open since 2007. Despite all of these factors, utility pole owners have not been able to cite one specific incidence where a safety or reliability issue was caused by a wireless attachment.

The DAS Forum submitted a technical explanation of the NESC rules governing pole top attachments by a recognized industry expert in the field. The declaration is attached here again. It explains, in detail, the NESC rules governing pole top attachments and the process by which these rules were created. The declaration shows that utility pole owners have had standards in place to deal with wireless attachments to pole tops for years, and that they are safe.

Again, there is no evidence on the record to support the claims of some utility pole owners that wireless attachments pose unique safety and reliability issues. Thousands of wireless attachments have been placed on utility poles and pole tops safely and without any threat to reliability. The Commission must recognize this reality.

V. CONCLUSION

This proceeding presents the Commission with an opportunity to take action now to reduce the serious barriers facing wireless attachers to utility poles. The DAS Forum is simply asking the Commission to give meaning the rights of wireless attachers by ensuring they are afforded access to poles and pole tops, are subject only to regulated rates for the type of service they are providing, and are afforded reasonable make ready timelines.

Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter will be filed via ECFS with your office. Please do not hesitate to contact the undersigned with any questions.

¹² *Order and FNPRM ¶¶ 35-44.*

¹³ 2010 Reply Comments of NextG at 9-18.

Sincerely,

/s/

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